

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE: : CHAPTER 7
: :
LAPRADE'S MARINA, LLC, : CASE NO. 15-20697-JRS
: :
Debtor. :
_____:

**MOTION OF TRUSTEE FOR AN ORDER PURSUANT TO BANKRUPTCY
RULE 2004 AUTHORIZING EXAMINATION OF CARBONITE, INC. AND
DIRECTING THE PRODUCTION OF DOCUMENTS**

COMES NOW, S. Gregory Hays, as Chapter 7 Trustee ("**Trustee**") for the Estate (the "**Estate**") of LaPrade's Marina, LLC, Debtor ("**Debtor**") in the above captioned Bankruptcy Case (the "**Bankruptcy Case**"), by and through counsel, and hereby files this Motion for an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examination of Carbonite, Inc. ("**Carbonite**") and Directing the Production of Documents (the "**Motion**"). In support of the Motion, the Trustee respectfully shows the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(B). Venue of this proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are Section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2004-1 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the "**Bankruptcy Local Rules**").

BACKGROUND

3. After the Debtor was formed on March 27, 2006, the principal of the Debtor, Peter Anzo ("**Anzo**"), held a majority membership interest in the Debtor and also acted as a manager.

4. Anzo has previously testified that Performance Consulting Partners, LLC ("**PCP**") began serving as the management company of the Debtor in early 2014. PCP is purportedly owned by a Wyoming Trust named Terret Investments ("**Terret**").

5. On April 6, 2015 (the "**Petition Date**"), the Debtor filed a voluntary petition under Chapter 11 of Title 11, United States Code.

6. Pursuant to a statement from Carbonite dated June 10, 2016, Anzo's wife, Christine Anzo ("**Christine**"), purchased certain computer and data backup services from Carbonite described as "CRB*BACKUP-877-665-4466, MA" (the "**Backup**"). These services were apparently paid for by the Debtor.

7. On November 17, 2016, the Court entered an order denying Debtor's motion to dismiss and granted a motion to convert the case to Chapter 7 [Dkt. No. 232].

8. After the United States Trustee appointed an interim Chapter 7 Trustee, on February 10, 2017, the United States Trustee filed its "Report of Undisputed Chapter 7 Trustee Election" [Dkt. No. 263] wherein the United States Trustee reported that S. Gregory Hays was elected as Trustee in the Bankruptcy Case in an undisputed election held at the 341 meeting on February 6, 2017.

9. Since being appointed, the Trustee, with the assistance of the professionals of the Trustee, has, among other things, investigated: a) the assets, liabilities, and operations of the Debtor; b) the disposition of the assets of the Debtor; c) transactions involving the Debtor and

Anzo, parties related to Anzo, or entities owned by or in which Anzo was involved, including, but not limited to, transfers of funds to Terret, PCP, and Christine (collectively, Anzo, Christine, PCP, Terret, and any other entities owned by Anzo or Christine or in which Anzo or Christine are involved are referred to herein as the “**Anzo Parties**”); d) the conduct of the Debtor and the Anzo Parties and the impact of such conduct on the Debtor and any assets or income streams of the Debtor; and e) causes of action available for the benefit of the Estate.

10. The Trustee has reason to believe that Carbonite may have electronically stored information, knowledge, data, records, communications, correspondence, and/or documents (collectively, the “**Documents**”) relevant to the Bankruptcy Case and the investigation of the Trustee. These Documents include, but are not limited to, the following: a) electronically stored information maintained by Carbonite in the form of the Backup requested by Christine or any other backup services provided by Carbonite at the request of the Debtor or any of the Anzo Parties that may contain relevant evidence in the Bankruptcy Case; or b) any Documents related to customer account(s) created by or on behalf of any of the Anzo Parties or associated or registered with the domain name lapradesmarina.com, under [REDACTED], [REDACTED], [REDACTED], or [REDACTED] (collectively, the “**Applicable Email Addresses**”), or with 706-947-0010 as the phone number. Since the Debtor may have paid for the services from Carbonite, these Documents may also be property of the Estate.

11. In April and May, 2017, counsel for the Trustee sent correspondence to Carbonite indicating that the Trustee has reason to believe that electronically stored information maintained by Carbonite may contain evidence critical to the Bankruptcy Case and that such information should be preserved and frozen.

RELIEF REQUESTED AND BASIS THEREFOR

12. Bankruptcy Rule 2004 allows for the examination of the Debtor and nondebtor entities relating “to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.” Fed. R. Bankr. P. 2004(b). Courts interpret the right to use Rule 2004 as an investigative tool very broadly, likening such examinations as licensed “fishing expeditions.” *See In re M4 Enters, Inc.*, 190 B.R. 471, 474 (Bankr. N.D. Ga. 1995).

13. Section 704 of the Bankruptcy Code sets forth the duties of the Trustee, including the duty to “investigate the financial affairs of the debtor.” *See* 11 U.S.C. § 704(a)(4). By this Motion, the Trustee seeks to continue to fulfill his statutory duty to investigate the financial affairs and assets of the Debtor and attempt to determine whether any: a) assets or opportunities were diverted or improperly transferred from the Debtor; and b) causes of action are available for the benefit of the Estate.

14. Under the circumstances, the Trustee should be permitted to conduct an examination of Carbonite concerning any and all matters within the scope permitted by Rule 2004(b) (the “**Bankruptcy Rule 2004 Exam**”) and obtain Documents from Carbonite. The topics to be covered in the Bankruptcy Rule 2004 Exam and the Documents to be produced prior to the Bankruptcy Rule 2004 Exam are specified in the Trustee's Notice of Bankruptcy Rule 2004 Examination of Carbonite, Inc. and the Production of Documents attached hereto as **Exhibit 1**.

WHEREFORE, the Trustee requests that this Court: (a) grant this Motion by entering an order substantially in the form of the proposed order attached as **Exhibit 2** hereto; and (b) grant the Trustee such other and further relief as is just and proper.

Respectfully submitted this 23rd day of May, 2017.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

3343 Peachtree Road NE, Suite 200

Atlanta Financial Center, East Tower

Atlanta, GA 30326

(404) 926-0053

hsewell@sewellfirm.com

*Counsel for S. Gregory Hays, as Chapter 7 Trustee
of LaPrade's Marina, LLC*

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE: : CHAPTER 7
: :
LAPRADE'S MARINA, LLC, : CASE NO. 15-20697-JRS
: :
Debtor. :
_____ :

NOTICE OF BANKRUPTCY RULE 2004 EXAMINATION OF CARBONITE, INC. AND
THE PRODUCTION OF DOCUMENTS

TO: Carbonite, Inc.
c/o Danielle Sheer, Esq.
Vice President and General Counsel
2 Avenue de Lafayette
Boston, MA 02111

Please take notice that, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, a representative of Carbonite, Inc. ("**Carbonite**" or the "**Witness**") is required to attend an examination (the "**Examination**") by S. Gregory Hays, Chapter 7 Trustee (the "**Trustee**") for the Estate (the "**Estate**") of LaPrade's Marina, LLC, Debtor ("**Debtor**") in the above captioned Bankruptcy Case (the "**Bankruptcy Case**"), pursuant to the Order by the United States Bankruptcy Court for the Northern District of Georgia dated _____, 2017 (Dkt. No. ____, the "**Examination Order**") authorizing the Examination of Carbonite as to any and all matters within the scope of the Bankruptcy Case permitted by Rule 2004(b). The Examination will commence at 10:00 a.m., on June ____, 2017, at the Law Offices of Henry F. Sewell Jr., LLC, located at 3343 Peachtree Road NE, Suite 200, Atlanta Financial Center, East Tower, Atlanta, GA 30326, or as otherwise agreed to by the parties. The Examination will be recorded stenographically, and may be recorded by audio or video tape, before an officer qualified to make such examinations and continue from day to day until completed. The Examination will be

taken for the purposes of discovery in the Bankruptcy Case and for all other purposes permitted by law, including use at trial, if and where appropriate.

PLEASE TAKE NOTICE that Carbonite is required to designate a representative to attend and testify at the Examination as to any and all matters within the scope of the Bankruptcy Case permitted by Rule 2004(b), including, but not limited to, the following: a) any computer or data backup created or modified as a result of any request by Christine Anzo incident to the statement from Carbonite dated June 10, 2016 (the “**Backup**”) or any other backup created or modified as a result of any request by the Debtor or any of the Anzo Parties (the “**Anzo Parties**” are defined as Peter Anzo, Christine Anzo, Performance Consulting Partners, LLC, Terret Investments, and any other entities owned by or in which Peter Anzo or Christine Anzo are involved); and b) any Documents¹ related to customer account(s) created by or on behalf of any of the Anzo Parties or associated or registered with the domain name lapradesmarina.com, under

¹ “**Document**” and “**Documents**” are used in the broadest possible sense and include, but are not limited to, all original and all non-identical copies of any writing or record of any type or description, including, but not limited to, the following items, and each draft thereof: writings, recordings, notes, photographs, financial statements, agreements, contracts, legal documents, communications, e-mails, Correspondence, letters, statements, reports, envelopes, phone messages, telephone logs, agendas, books, articles, receipts, purchase orders, sales orders, tape recordings, affidavits, opinions, notices, proposals, invoices, confirmations, telegrams, cables, memoranda, records, summaries of records, summaries of data, summaries of personal conversations or interviews, diaries, appointment books, appointment logs, desk calendars, pocket calendars, forecasts, statistical statements, accounts, work papers and related supporting documents, graphs, charts, maps, diagrams, blue prints, tables, indexes, pictures, tapes, microfilms, charges, analytical records, minutes or records of meetings or conferences, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, appraisals, records, reports or summaries of negotiations, brochures, pamphlets, circulars, trade letters, press releases, stenographic, handwritten or any other notes, projections, bank statements, checks (front and back), check stubs or receipts, checkbooks, canceled checks, invoice vouchers, electronically or magnetically recorded or stored data, data tapes and sheets or data processing cards or discs or any other computer-related data compilation, and any other written, recorded, printed, typed, photographed, transcribed, punched, taped, filmed, or electronically or graphically recorded documents or writings of whatever description however produced or reproduced, including but not limited to, any information contained in any computer although not yet printed, within your possession, custody or control or in the possession, custody or control of any agent, employee (including without limitation, attorneys, accountants and investment bankers or advisors), or other Person acting on your behalf.

the Applicable Email Addresses (as defined in the Examination Order) or with 706-947-0010 as the phone number.

PLEASE TAKE FURTHER NOTICE that, pursuant to Bankruptcy Rule 2004(c), Carbonite is further instructed to produce for inspection and copying at the Law Offices of Henry F. Sewell Jr., LLC, located at 3343 Peachtree Road NE, Suite 200, Atlanta Financial Center, East Tower, Atlanta, GA 30326, at 10:00 a.m. on June ___, 2017, or as otherwise agreed to by the parties, any computer or data Backup created or modified as a result of any request by Christine Anzo or any other backup created or modified as a result of any request by the Debtor or any of the Anzo Parties and any Documents, Communications,² or Correspondence³ related to such services or customer account(s) created by or on behalf of any of the Anzo Parties or associated or registered with the domain name lapradesmarina.com, under the Applicable Email Addresses, or with 706-947-0010 as the phone number..

Dated this ____ day of May, 2017.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.
Georgia Bar No. 636265
3343 Peachtree Road NE, Suite 200
Atlanta Financial Center, East Tower
Atlanta, GA 30326
(404) 926-0053
hsewell@sewellfirm.com

*Counsel for S. Gregory Hays, as Chapter 7 Trustee
of LaPrade's Marina, LLC*

² "Communication" or "communications" means any contact or act by which any information or knowledge is transmitted or conveyed between two or more Persons and shall include, without limitation, written contact by such means as letters, memoranda, Correspondence, telegrams, telex, or by any document, and oral contact by such means as face-to-face meetings and telephone conversations.

³ "Correspondence" means all Documents transmitted from one Person to another, including those in electronic form, and all attachments to such Documents.

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE: : CHAPTER 7
: :
LAPRADE'S MARINA, LLC, : CASE NO. 15-20697-JRS
: :
Debtor. :
_____:

**ORDER GRANTING MOTION OF TRUSTEE FOR AN ORDER PURSUANT TO
BANKRUPTCY RULE 2004 AUTHORIZING EXAMINATION OF CARBONITE, INC.
AND DIRECTING THE PRODUCTION OF DOCUMENTS**

This matter is before the Court on the Motion for an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examination of Carbonite, Inc. and Directing the Production of Documents (Doc. No. ____, the "**Motion**") filed by S. Gregory Hays, as Chapter 7 Trustee ("**Trustee**") for the Estate (the "**Estate**") of LaPrade's Marina, LLC, Debtor ("**Debtor**") in the above captioned Bankruptcy Case (the "**Bankruptcy Case**"). The Court has reviewed and considered the Motion and finds that good cause exists for entry of this Order as set forth herein.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED as set forth herein.
2. The Trustee is authorized and empowered to schedule and conduct an examination (the "**Examination**") of a representative of Carbonite, Inc. (the "**Witness**") pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure concerning any and all matters within the scope permitted by Rule 2004(b), including, but not limited to, with regard to the topics set forth in the Trustee's Notice of Bankruptcy Rule 2004 Examination of Carbonite, Inc. and the Production of Documents (the "**Examination Notice**").
3. Carbonite is COMMANDED to designate a representative to attend and testify at the Examination as to any and all matters within the scope of the Bankruptcy Case permitted by

Rule 2004(b), including, but not limited to, the following: a) any computer or data backup created or modified as a result of any request by Christine Anzo incident to the statement from Carbonite dated June 10, 2016 (the “**Backup**”) or any other backup created or modified as a result of any request by the Debtor or any of the Anzo Parties (the “**Anzo Parties**” are defined as Peter Anzo, Christine Anzo, Performance Consulting Partners, LLC, Terret Investments, and any other entities owned by or in which Peter Anzo or Christine Anzo are involved); and b) any Documents¹ related to customer account(s) created by or on behalf of any of the Anzo Parties or associated or registered with the domain name lapradesmarina.com, under the Applicable Email Addresses (as defined in the Motion), or with 706-947-0010 as the phone number.

4. The Examination may be continued from time to time or adjourned by agreement of counsel for the Trustee and counsel for the Carbonite without the necessity of further Order of this Court.

5. Carbonite shall produce for inspection and copying at the Law Offices of Henry F. Sewell Jr., LLC, located at 3343 Peachtree Road NE, Suite 200, Atlanta Financial Center, East Tower, Atlanta, GA 30326, at 10:00 a.m. on June 23, 2017, or as otherwise agreed to by the parties, as set forth in the Examination Notice, any computer or data Backup created or modified as a result of any request by Christine Anzo or any other backup created or modified as a result of any request by the Debtor or any of the Anzo Parties and any Documents, Communications, or Correspondence related to such services or customer account(s) created by or on behalf of any of the Anzo Parties or associated or registered with the domain name lapradesmarina.com, under the Applicable Email Addresses, or with 706-947-0010 as the phone number.

END OF DOCUMENT

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Examination Notice.

Prepared and Presented by:

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

3343 Peachtree Road NE, Suite 200

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Counsel for S. Gregory Hays, as Chapter 7 Trustee of LaPrade's Marina, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE: : CHAPTER 7
: :
LAPRADE'S MARINA, LLC, : CASE NO. 15-20697-JRS
: :
Debtor. :
_____:

CERTIFICATE OF SERVICE

This is to certify that service of the within and foregoing redacted **Motion of the Trustee for an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examination of Carbonite, Inc. and Directing the Production of Documents** was served via the United States Bankruptcy Court for the Northern District of Georgia's Electronic Case Filing System to all parties who have filed appearances and requested notices and by United States Mail with adequate postage affixed thereon and addressed as follows:

R. Bruce Russell
30 Chechero Street
Clayton, Georgia 30525

In addition, an unredacted version of the **Motion of the Trustee for an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examination of Carbonite, Inc. and Directing the Production of Documents** was served by United States Mail with adequate postage affixed thereon and addressed as follows:

Scott B. Riddle, Esq.
Law Office of Scott B. Riddle, LLC
Suite 1800, Tower Place 100
3340 Peachtree Road, NE
Atlanta, GA 30326

Carbonite, Inc.
c/o Danielle Sheer, Esq.
Vice President and General Counsel
2 Avenue de Lafayette
Boston, MA 02111

This 23rd day of May, 2017.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

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